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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

APPLICANT(s): Outi Aho

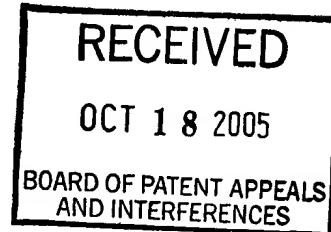
SERIAL NO.: 09/774,308 ART UNIT: 2665

FILING DATE: 01/31/2001 EXAMINER: Stevens, R.

TITLE: METHOD AND A DEVICE FOR TRANSFERRING CAPABILITY INFORMATION

ATTORNEY
DOCKET NO.: 858-010043-US (PAR)

Board of Patent Appeals and Interferences
United States Patent and Trademark Office
P.O. Box 1450
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APPELLANTS BRIEF

(37 C.F.R. §1.192)

This is an appeal from the final rejection of the claims in the subject application. A Notice of Appeal was mailed on August 17, 2005.

[1] REAL PARTY IN INTEREST

The real party in interest in this Appeal is the assignee, Nokia Corporation, Helsinki, Finland.

[2] RELATED APPEAL AND INTERFERENCES

There are no related appeals or interferences.

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[3] STATUS OF THE CLAIMS

Claims 1-12 stand rejected under 35USC103(a) on the basis of the "admitted prior art" in view of teaching of the cited reference Bhagwat, U.S. Patent No. 6,721,805. Claims 1-12 are presented for consideration in this appeal and are contained in Exhibit A.

[4] STATUS OF AMENDMENTS FILED SUBSEQUENT TO FINAL REJECTION

There were no amendments filed after Final Rejection.

[5] SUMMARY OF THE CLAIMED SUBJECT MATTER

This application is directed to a device (claim 1), a method (claim 7), and a system (claim 11) for facilitating the capabilities negotiation in a wireless network, which involves the transmission of information relating to the capabilities of a mobile terminal being used. Because of the large diversity of terminals operating in a network, it becomes problematical as to what types of transmission can effectively be sent to or expected from a given terminal in a network. Capabilities information can be divided roughly into four different groups: 1) hardware capabilities; 2) software capabilities; 3) User Agent capabilities; and 4) multimedia message-specific special capabilities. As illustrated in figures 3, 4 and 5 of this application, the terminal of this invention stores capability information 32 within the device, the capability information 32 is processed for transmission in capability information module 50 (see figure 4) by packing such information into the payload part of the message 24 before the message 24 is transferred to the protocol stack. The capability information is thus placed

into the payload part over the protocol stack, such as WAP and sent without a separate request.

[6] ISSUES PRESENTED FOR REVIEW

A. The issue presented for review is the propriety of the Examiner's rejection of claims 1-12 under 35 USC 103(a) based on the "admitted prior art" in view of the cited reference, Bhagwat, et al, U.S. Patent No. 6,721,805. The rejection is contained in the Office Action mailed April 19, 2005. A copy of the cited reference is attached as Exhibit B.

[7] Argument

The Examiner has cited the "admitted prior art" in general without any reference to where this "admitted prior art" is described. Presumably this may be contained in the Background section of this application. The "admitted prior art" is characterized by the Examiner as follows:

...."the admitted prior art teaches a device for transferring capability information, comprising: means for storing the capability information of the device means for preparing a message for transmission comprising processing according to a specific protocol stack, means for transmission the message comprising a header part and a payload part."

It is not disputed by Applicant that capability information is transmitted as part of the capability negotiation of the prior art. It should be noted, however, that such prior art negotiations have the disadvantages described in paragraph 0009 of this application.

The issue in this appeal involves the substance of the cited reference Bhagwat to which the examiner attributes the following teaching:

"Bhagwat teaches (table 2 and col. 9, line 19-col. 10, line 15) means for packing the capability information into the payload part of the message before the message is transferred to the protocol stack wherein the message is transmitted without separate request."

Applicant submits that these excerpts cited by the Examiner do not teach packing of capability information of a mobile terminal into the payload part of a message to be transmitted from a mobile terminal. The payload part of the message described in the cited reference Bhagwat contains information relating to the common transmission medium designated as WAT and WAP_t and nothing more. Table 2 of Bhagwat is described as follows:

"The PAYLOAD frame is sent from a WAT to the WAP_t following a POLL frame, or sent from the WAP_t to the WAT and includes the following additional information fields: seqNumber, flushIndicator, segmentation State and payload Size shown and described in Table 2."

TABLE 2	
The PAYLOAD frame	
seqNumber	the sequence number of this frame; used to distinguish between retransmitted frames
flushIndicator	if set, upon receipt of this information, the recipient station resets the counter where the sequence number of the frame to be received is stored
segmentationState	this field specifies if the sent frame contains the beginning, middle, or end portion of a large payload packet
payloadSize	this field is used to determine the end of the payload field in a variable length frame

Applicant submits that the cited reference does not support the Examiner's characterization.

The cited section of this reference does not include any suggestion relating to use of the payload part, but describes payload frame headers according to the invention disclosed in Bhagwat. The fields disclosed in a frame are necessary for transmitting data frames in the system disclosed in Bhagwat and do not suggest any transmission of capability information within the actual payload part of the payload frame. Thus even if the references are combined, the result is not the present invention. In particular, the claimed capability information in the payload portion would still be missing from the combination.

The Issue of Obviousness

It is well settled that in order to establish a *prima facie* case for obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, without reference to the disclosure of this application.

Applicant submits that the above described deficiencies of the so called "admitted prior art" are not remedied by the proposed combination with the teaching of the reference Bhagwat. The combined references do not therefore support a *prima-facie* case of obviousness. The modification of the teachings of Bhagwat, in order to obtain the invention, as described in the claims

submitted herein, would not have been obvious to one skilled in the art.

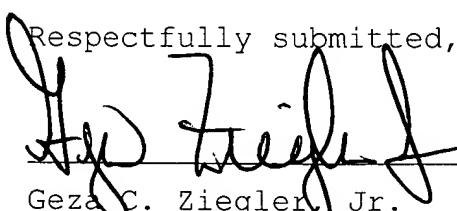
The above arguments apply equally to the rejected dependent claims.

[8] SUMMARY

It is respectfully submitted that all of the claims, as presented, are clearly novel and patentable over the prior art of record. Accordingly, the Board of Appeals is respectfully requested to favorably consider the rejected claims and to reverse the final rejections, thereby enabling this application to issue as a U.S. Letters Patent.

A check in the amount of \$500 is enclosed for the Appeal Brief Fee. The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,



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14 October 2005

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CLAIM APPENDIX

1. (currently amended) A mobile terminal device for transferring capability information, comprising means for storing the capability information of the device in the memory of the mobile terminal, means for preparing a message for transmission comprising processing according to a specific protocol stack, means for transmitting the message comprising a header part and a payload part, wherein the mobile terminal device further comprises means for packing the capability information into the payload part of the message before the message is transferred to the protocol stack and wherein said message is transmitted without separate request.
2. (original) A device according to claim 1, wherein said data transmission protocol is WAP (Wireless Application Protocol).
3. (original) A device according to claim 1, wherein said message is arranged for being transmitted to a multimedia messaging service center (MMSC).
4. (original) A device according to claim 1, wherein said capability information comprises at least some of the following information: information on the hardware of a terminal, information on the software of a terminal, information on the WAP capabilities of a terminal, information on the capabilities of the browser of a terminal, information on the capabilities of a network and information on user preferences.

5. (original) A device according to claim 1, wherein said device is a wireless terminal.
6. (original) A device according to claim 1, wherein said device further comprises a user interface for changing the capability information.
7. (currently amended) A method for transferring capability information from a mobile terminal device, which method comprises storing the capability information of said device on the memory of the mobile terminal device, wherein, a message is prepared for processing according to a specific protocol stack, said message comprising a header part and a payload part, the method comprises packing said capability information into the payload part of a message before the message is transferred to a protocol stack, processing the message comprising the capability information according to a specific protocol stack, and transmitting said message a without separate request.
8. (original) A method according to claim 7, wherein said data transmission protocol is WAP (Wireless Application Protocol).
9. (original) A method according to claim 7, wherein said message is transmitted to a multimedia messaging service center (MMSC).
10. (original) A method according to claim 7, wherein said capability information comprises at least some of the following information: information on the hardware of a terminal, information on the software of a terminal, information on the WAP capabilities of a terminal, information on the capabilities

of the browser of a terminal, information on the capabilities of a network, and information on user preferences.

11.(original) A method according to claim 7, wherein the method comprises transmitting said message over a radio interface to a gateway.

12. (currently amended) A system for transferring capability information, comprising a mobile terminal (MS) and a multimedia messaging service center (MMSC) for implementing a multimedia messaging service between the terminal and the multimedia messaging service center, wherein the mobile terminal comprises means for storing the capability information on the memory of the mobile terminal device, means for preparing a message for processing according to a specific protocol stack, said message comprising a header part and a payload part, and means for packing the capability information of the mobile terminal into the payload part of a message, that goes from the mobile terminal to the multimedia messaging service center, before the message is transferred to the protocol stack, and wherein said message is transmitted without separate request. .